Editor's note: Appealed -- dismissed, Civ. No. 75-0905 (D.D.C. Aug. 8, 1975)

DUNCAN MILLER

IBLA 75-218 Decided April 14, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offer F-022139.

Affirmed.

1. Alaska: Land Grants and Selections: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease

   Under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), the first qualified applicant has a preference right to receive an oil and gas lease where the Department of the Interior has in the exercise of its discretion, determined to issue such a lease. But a lease offer does not create a vested interest where there has been no determination to lease the lands embraced in the lease offer. In the latter instance, the application for a lease is a hope or expectation rather than a valid claim against the Government, and the lease offeror has acquired no rights which are violated by issuance of a patent to the State of Alaska for the lands embraced in the lease offer.

2. Alaska: Land Grants and Selections: Generally -- Notice: Constructive Notice

   Published notice of a proposed state selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

3. Alaska: Land Grants and Selections: Applications -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Patented or Entered Lands

An oil and gas lease offer must be rejected when approval is given to a subsequently filed state selection embracing the same lands, including the mineral rights. Following issuance of patent to the State, the Department loses jurisdiction over the patented land.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Duncan Miller has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting his oil and gas lease offer, F-022139, for lands in Block 7, T. 3 N., R. 19 E., U.P.M., Alaska, on the grounds that the United States no longer has jurisdiction over the lands, nor authority to issue leases thereon, as the lands in the subject offer, including the mineral rights, were patented to the State of Alaska on March 27, 1974.

The lands embraced in appellant's lease offer have been the subject of considerable administrative and judicial adjudication since 1958. Following a thorough discussion of the history of the actions taken with respect to the subject land, the State Office came to its conclusion that the land was no longer within the Department's jurisdiction following patent to the State of Alaska and, therefore, appellant's lease offer had to be rejected. We have reviewed the record and find the State Office's conclusion to be correct. Accordingly, we affirm the decision below, a copy of which is attached as Appendix A. In response to additional issues raised by the appeal, the following is added.

In his statement of reasons on appeal, appellant states that the history of the case, as recited by the State Office, is substantially correct; however, he urges that the facts disclose a violation of his constitutional rights. Appellant argues that due to the unusual circumstances of this case, his lease application was in a special class, and consequently, the asserted reasons for failing to approve the lease application were not valid. In addition, appellant argues that he should have received notice

prior to the land being patented to the State of Alaska. Finally, he argues that notwithstanding patent to the State, "there is nothing to prevent the lease being issued because of the patent."

[1] Appellant's lease offer has been subject to a "suspended" status for a considerable number of years pending a Departmental determination regarding the availability of the subject lands for noncompetitive oil and gas leasing. See historical discussion in Appendix A. However, due to continuing litigation, Native protests, withdrawals, and finally State selection, the Department exercised its discretionary authority in this matter and chose to suspend oil and gas leasing activity on the subject land. A qualified oil and gas lease applicant under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), may have a preference right to a lease over anyone else under the law where the Department has, in the exercise of its discretion, determined to issue a lease, but a lease offer does not create a vested interest where there has been no determination to lease. In the latter instance, an application for a lease is a hope, or expectation, rather than a valid claim against the Government. Udall v. Tallman, 380 U.S. 1, 4 (1965); Schraier v. Hickel, 419 F.2d 663, 666-67 (D.C. Cir. 1969), aff'g Charles Schraier, A-30814 (November 21, 1967); Yolana Rockar, 19 IBLA 204 (1975); Lloyd W. Levi, 19 IBLA 201 (1975). Accordingly, we conclude that appellant acquired no rights which were violated by issuance of a patent to the State of Alaska for the lands embraced in his offer.

[2] As for appellant's second argument, we reject it as having no merit if he is suggesting that it was improper for the Department to issue a patent to the State without having first given appellant actual notice. There is no indication in the record that all necessary steps required by law had not been taken before patent issued to the State. See Maxwell Land-Grant Case, 121 U.S. 325, 381-82 (1887). Pursuant to 43 CFR 2627.4(c), the State of Alaska was required to publish notice of its proposed selection for five consecutive weeks in order to bring to the knowledge and attention of all persons who were interested in the selected lands the fact that the State proposed to establish and perfect its claim to the lands. The purpose of this notice was to allow all persons claiming the lands adversely to file with the BLM their objections to issuance of patent to the State. Publication in accordance with regulatory requirements is adequate notice. Chemi-Cote Perlite Corp. v. Bowen, 72 I.D. 403 (1965); see also 66 C.J.S. Notice §§ 13, 18 (1955), and cases cited therein. Accordingly, we find that, as a result of publication, appellant received adequate notice and an opportunity to object to the issuance of the patent to the State of Alaska.

[3] Finally we turn to appellant's remaining argument, namely, that the Department should have issued him a lease notwithstanding patent to the State. This argument is without merit. Appellant was never determined to be the first qualified applicant for a lease. The most the prior proceedings gave him was priority after senior priorities had been established by a second drawing. A second drawing, however, was never held. Further, even if appellant were the first qualified applicant, an oil and gas lease offer must be rejected when approval is given to a subsequently filed State selection. Yolana Rockar, supra; Lloyd W. Levi, supra; Standard Oil Co. of California, 71 I.D. 1, 2 n.2 (1964); Union Oil Co. of California, A-29907 (February 20, 1964); Violet Gorensen, A-29268 (April 24, 1963); J. L. McCarrey, Jr., A-28436 (November 14, 1960); cf. Cripple Creek Coal Co., 70 I.D. 451 (1963); see also 43 CFR 2627.3(b)(2). In addition, as correctly noted in the State Office decision, after the subject lands were patented to the State, the Department lost jurisdiction over the lands. Russ Journigan, 16 IBLA 79, 80 (1974); Bryan N. Johnson, 15 IBLA 19, 21 (1974); R. E. Puckett, 14 IBLA 128, 130 (1973); Pexco, Inc., 66 I.D. 152, 154 (1959). Accordingly, we conclude that the State Office was required to reject appellant's lease offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

APPENDIX A

State Office
555 Cordova Street
Anchorage, Alaska 99501

DECISION

Duncan Miller	:	F-022139
Box 728		:
Boulder City, Nevada 89005	:	Oil and Gas

Offer Rejected

On October 22, 1958, Duncan Miller filed the subject oil and gas lease offer which describes Block 7, T. 3 N., R. 19 E., Umiat Meridian. The record shows that this parcel of land was included in a published Bureau Order, 23 F.R. 5700 (July 29, 1958), which opened some 4 million acres in the Umiat-Gubik area of northern Alaska to simultaneous filing of noncompetitive oil and gas lease offers. On October 1 and 2, 1958, the Bureau of Land Management held a drawing to establish priority for oil and gas lease offers that had been simultaneously filed under the authority of this order. After the drawing, Mr. Miller filed his offers for five of the blocks and then protested against the issuance of leases to the successful drawees. The Department held that both the drawing had been improperly held and the successful drawees were disqualified by their own acts for [sic] receiving leases. Evelyn R. Robertson, et al., Duncan Miller A-29251 (March 21, 1963). It ordered the drawing vacated and directed that a new drawing be held. It also set aside the Bureau of Land Management's determination that, the offers of all those who filed in the drawing having been disposed of Mr. Miller was the first qualified applicant to whom the lease must be issued. It said nothing directly about rejecting his offers but only reversed so much of the Bureau of Land Management's decision as held Mr. Miller to be the first qualified applicant.

Both the drawees and Mr. Miller sought judicial review of the Departmental decision. The Department's actions with respect to the drawees were upheld in Robertson v. Udall, 349 F.2d 195 (D.C. Cir. 1965), and in Wells v. Udall, Civil No. A-37-63 (D. Alaska, September 7, 1965). Its actions as to Mr. Miller were sustained in Miller v. Udall, 349 F.2d 193 (D.C. Cir. 1965), cert. denied 385 U.S. 939, (1966).

When the litigation came to an end, the Land Office directed a refund to Mr. Miller of his advance rentals. He objected on the ground that nothing that had taken place constituted a rejection

of his offers. The Office of Hearings and Appeals 1/ concluded that while nothing in the Department's decision specifically stated that Mr. Miller's offers were rejected, the decision, since it held Mr. Miller was not the first qualified applicant, must be read to have reached that result. In addition, it had held that the decision suspended the order opening the lands to oil and gas leasing until a new drawing could be held. This action, it said, effectively rejected Mr. Miller's offer. The Office of Hearings and Appeals held that the Department's decision affirmed by the court constituted final administration action and that no appeal could lay in the Department on the issue of the acceptability of the lease offers.

Mr. Miller denied that his offers had been rejected and insisted that he could appeal from any action constituting a rejection. In Secretarial decision Duncan Miller, A-30891, [March 5, 1968], the Department held that Mr. Miller's position was sound. The earlier appeals and litigation neither involved the validity of his offers nor did they purport to reject them. The opinion concluded that Mr. Miller's offers had not been rejected and were not to be rejected at that time. The case was remanded to the Department and the offers were to remain pending, if Mr. Miller chose to keep them so, but were to be given priority only after that established for offers taking part in the second drawing. Mr. Miller appealed this decision also; and, on May 3, 1968, in Duncan Miller v. Udall, Civil Action 745-68, the D.C. District Court dismissed the complaint.

On January 16, 1969, Duncan Miller petitioned the Secretary of the Interior for issuance of the subject lease. It was his understanding that Public Land Order 4852 prevented further drawings and that his priority lease offer should be issued. The Department responded on January 23, 1969, with a notice to Mr. Miller explaining that a Native protest had been filed which was in conflict with F-022139; therefore, no new drawing would be scheduled and the application was, for the time being, suspended. In December of 1970, Mr. Miller once again protested the failure to issue the lease. In a decision dated February 9, 1971, his protest was dismissed. The Land Office reasoned that because of conflicting Native protest F-03257, no announcement had been made as to a new drawing. If the lands involved in this application were to become available to noncompetitive leasing, they

1/ This is an erroneous reference to the Bureau of Land Management's now defunct Office of Appeals and Hearings, which handled intermediate appeals to the Director under the former appellate system.

December of 1973 and informed Mr. Miller, that, although the Interior Board of Land Appeals had remanded the subject offers to the office for processing, the lands described were still withdrawn from appropriation under the public land laws, including leasing under the Mineral Leasing Act, by Public Land Order 5186, dated March 15, 1972, which withdrew land for classification and protection of the public interest. Therefore, the Land Office noted that no action could be taken until the land order was lifted.

On April 26, 1974, the Land Office once again wrote to the applicant, Mr. Miller. They told him that the subject lease offer was among many of record in the Fairbanks Land Office prior to January 17, 1969, which was the effective date of PLO 4582, which withdrew national resource lands in Alaska from leasing under the mineral leasing laws. The letter went on to describe the Secretary of the Interior's continuing policy of maintaining on record all of the oil and gas lease offers which were filed prior to the issuance of PLO 4582. The policy states that the offers will remain in status quo, unless withdrawn by the applicant, until the lands described in the offers are either (1) conveyed to a village or regional corporation, (2) patented to the State of Alaska, or (3) again made available for mineral leasing. (See Vance W. Phillips, Aelisa A. Burnham, 14 IBLA 79 (December 11, 1973).)

All of the lands embraced in the subject offer, as described in State selection application F-10333, were patented to the State of Alaska on March 27, 1974. Section 6(i) of the Statehood Act provides that "mineral deposits in such lands shall be subject to lease by the State." (Emphasis added.)

Since the Federal Government no longer has jurisdiction of these lands or the authority to issue leases thereon, the subject offer must be and hereby is rejected.